

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.4170 of 2006
Date of decision:24.10.2006

Chandigarh Construction Company Private Limited, Chandigarh

....Petitioner

versus

The Commissioner of Income Tax-I, Chandigarh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. V.Ramswaroop, Advocate, for the petitioner.

Mr. SK Garg Narwana, Advocate, for the respondents.

JUDGMENT:

1. This petition seeks quashing of order dated 4.1.2006, Annexure P.17, rejecting prayer of the petitioner for refund of tax deducted at source (TDS) alongwith interest on the ground that the said issue could be decided only at the time of assessment.

2. Case of the petitioner is that it received certain payments in pursuance of award of the arbitrator in its favour on account of work executed by it, which was made rule of court on 21.10.1995 but against which appeal was pending and stay was granted subject to deposit of 25% of the awarded amount against security. The payment of the above amount was made to the petitioner on 22.4.1996 after deducting TDS.

2.1 The petitioner filed return for the assessment year 1998-99 claiming refund of Rs.7,20,690/-. The income was assessed and certain deductions were not allowed. On appeal, the CIT(A) decided the appeal and thereafter, passed an order of rectification holding that income of interest was not taxable in the year under consideration and a direction was issued that the awarded amount be assessed in the year of finality, as per the law

laid down by the Hon'ble Supreme Court in CIT West Range-II v. Hindustan Housing & Land Development Trust Limited, (1986) 161 ITR 524. Against the said order, appeal was pending before the Tribunal at the instance of the revenue. To give effect to the order of the Tribunal, an order was passed by the Assessing Officer but TDS was not ordered to be refunded.

2.2 The petitioner, thereafter, filed a petition under section 264 of the Income Tax Act, 1961 (for short, 'the Act') before the Commissioner of Income Tax-I. The said petition was dismissed. It was observed that credit for TDS could be given in the year of assessment only, in accordance with Section 199 of the Act.

3. We have heard learned counsel for the parties.

4. In view of undisputed position that the amount on which tax has been deducted at source has not yet been assessed and as such, tax liability has not been determined, question of refund of the amount deducted at source at this stage, does not arise, the issue will have to be decided at the time of assessment. The provisions of Section 199 of the Act are quite explicit on the issue. The Commissioner while passing the order under section 264 of the Act has dealt with the issue in detail and we endorse the view expressed by the Commissioner.

5. Accordingly, we do not find any ground to interfere with the view taken in the impugned order.

6. The writ petition is dismissed.

(Adarsh Kumar Goel)
Judge

October 24, 2006
'gs'

(Rajesh Bindal)
Judge